

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

HILL-ROM COMPANY, INC., )  
HILL-ROM MANUFACTURING, INC., )  
and HILL-ROM SERVICES, INC. )

Plaintiff, )

v. )

GENERAL ELECTRIC COMPANY, )

Defendant. )  
\_\_\_\_\_ )

Case No. 2:14-cv-187

**DECLARATION OF ADAM MCMULLIN**

Adam McMullin, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am Vice President and General Manager of Hill-Rom Clinical Work Flow Solutions at Hill-Rom Manufacturing, Inc. (together with Hill-Rom Company, Inc. and Hill-Rom Services, Inc., “Hill-Rom”). Hill-Rom is an 85-year old company that specializes in systems and equipment used by health care providers throughout the world. I have personal knowledge of the facts set forth herein and, if called as a witness, would competently testify to such facts.

2. The failure of healthcare providers to wash or sanitize their hands is one of the most common means of transmission of Healthcare Associated Infections (“HAIs”). The Center for Disease Control and Prevention estimates that HAIs affected approximately 722,000 patients in acute care hospitals in the United States in 2011, with 75,000 deaths from those infections.

3. Hand hygiene compliance is one of the most effective means of reducing the incidence of HAIs.

4. Early hand hygiene compliance monitoring solutions frequently relied on third parties to monitor hand hygiene behavior or required employees to self-report hand hygiene compliance.

5. More recent products, such as Hill-Rom's real time locating system ("RTLS")-based hand hygiene system, utilize technology to produce more objective and comprehensive hand hygiene compliance information.

6. RTLS technology tracks the locations of people or things in real time.

7. RTLS-based hand hygiene systems combine RTLS tracking technology with hand hygiene systems to monitor the compliance of healthcare personnel in real time with hand hygiene requirements.

8. RTLS-based hand hygiene systems are directly aimed at reducing HAIs by providing healthcare providers the tools to achieve higher levels of compliance with hand hygiene requirements.

9. Hill-Rom was a pioneer in developing RTLS-based hand hygiene systems and holds several critical patents related to such systems.

10. Hill-Rom spent many years researching and developing its patents in the field of RTLS-based hand hygiene systems, with the first patent at issue here filed in 1999.

11. The RTLS-based hand hygiene system market is a specific market within the broader hand hygiene compliance sector.

12. The market for RTLS-based hand hygiene systems is in its infancy, and the few competitors are quickly moving to gain market share.

13. Although there are a handful of companies marketing RTLS-based hand hygiene systems, two primary competitors in the space are Hill-Rom and General Electric Healthcare (“GE”).

14. Hill-Rom’s and GE’s hand hygiene compliance products each operate through separate RTLS systems.

15. RTLS-based hand hygiene systems first became available commercially in approximately late 2012.

16. I estimate that in 2013, the RTLS-based hand hygiene market involved sales of approximately \$5 million.

17. Healthcare facility adoption of RTLS that is currently used for tracking equipment has been slow and steady, reaching current penetration of what I estimate to be approximately 30 percent of hospitals around the country.

18. Hill-Rom’s estimates indicate that the market for RTLS-based hand hygiene compliance systems is rapidly growing.

19. Hill-Rom views the nascent but growing demand for automated hand hygiene solutions as the driver for hospital adoption of RTLS systems and Hill-Rom’s other proprietary information technology solutions and product portfolio.

20. Because demand for hand hygiene solutions is expected to drive demand for RTLS and Hill-Rom’s other proprietary information technology solutions and product portfolio, Hill-Rom anticipates that it will make significant additional sales of its RTLS and other proprietary information technology solutions and product portfolio if it is able to sell its RTLS-based hand hygiene system.

21. Hill-Rom competes against GE and other firms with its RTLS-based hand hygiene system in order to establish a strong position in the market for such products.

22. Hill-Rom anticipates that its RTLS-based hand hygiene system will last approximately 5 to 8 and up to 15 years. Therefore, after a healthcare provider purchases a hand hygiene system, it is unlikely to purchase a replacement for that time period.

23. Based on my experience in this industry, when a healthcare provider does eventually replace or upgrade a product with a life span of up to 15 years, it is likely to purchase from the same company from which it purchased its original system.

24. My experience also indicates that when a healthcare provider chooses a particular brand for product with a long life cycle such as an RTLS-based hand hygiene system, it makes a lasting commitment to that brand by deploying the physical infrastructure and committing to training and design (or redesign) of processes.

25. In my experience, when Hill-Rom sells a customer a product with a long life span, that sale is likely to result in a long-term relationship with that customer.

26. Because of the high initial investment that health care providers must make in deploying RTLS-based hand hygiene systems, including physical infrastructure, training, and process design, in my experience, health care providers do not remove such systems once installed in order to install a competing brand's RTLS-based hand hygiene system. To change to another company's RTLS-based hand hygiene system would only add to the already significant initial cost that a healthcare provider incurred when it first installed an RTLS-based hand hygiene system.

27. Presently, one of the most significant and prized customers in the market for RTLS-based hand hygiene systems is Hospital Corporation of America ("HCA"), which

operates approximately 165 hospitals and 115 freestanding surgery centers throughout the country.

28. HCA management has indicated that it sees benefits to having a single network-wide provider both through discounted pricing and through internal efficiencies.

29. I have been informed by HCA that the only vendors from which it is considering purchasing RTLS-based hand hygiene systems for the hospitals it operates are Hill-Rom and GE.

30. Thus, Hill-Rom and GE are competing in the market for RTLS-based hand hygiene systems and are primarily competing for a single significant customer.

31. Some representatives of HCA have stated that they intend for GE to become HCA's preferred provider for hand hygiene compliance products, yet Hill-Rom has experienced some success promoting its RTLS-based hand hygiene system within some segments of HCA.

32. For example, one facility that recently installed Hill-Rom's RTLS-based hand hygiene system is HCA's Oklahoma University hospital in Oklahoma City.

33. Based on my experience in the industry, I believe that the company that secures HCA as a client will have an overwhelming advantage in the market, because HCA's decision to purchase from a particular supplier will confer a reputational advantage on that supplier and other customers will be more likely to purchase from it as well.

34. In approximately the Spring of 2013, Hill-Rom learned that GE was entering the nascent market for RTLS-based hand hygiene systems, and subsequently determined that GE likely was infringing numerous patents developed and owned by Hill-Rom.

35. Hill-Rom has learned that a hospital owned by HCA in Summerville, South Carolina has installed a GE AgileTrac system.

36. While it is difficult to confirm the number of hand hygiene systems GE has deployed, based on my discussions with HCA's leadership team the number appears to be approximately six.

37. To date, Hill-Rom has sold several RTLS-based hand hygiene systems in the United States, and is aware of at least one instance in which it initially made a sale, but the sale was then cancelled when the healthcare facility was told by HCA management that it was required to use GE's AgileTrac system.

38. Hill-Rom intends to sell, and is selling, its RTLS-based hand hygiene system that embodies its patented hygiene monitoring system.

39. Hill-Rom's initial approach to selling its RTLS-based hand hygiene system is two-fold. First, it is focusing on healthcare facilities currently using Hill-Rom's RTLS because these are the natural customers of the RTLS-based hand hygiene system that works in conjunction with Hill-Rom's RTLS.

40. Second, Hill-Rom is marketing its RTLS-based hand hygiene system to healthcare facilities that do not currently have RTLS because demand for its RTLS-based hand hygiene system drives demand for its overall RTLS.

41. I am informed and believe that currently there is only one GE account outside HCA using the AgileTrac Hand Hygiene system, but that GE is targeting other large integrated delivery networks ("IDNs") such as Maricopa Integrated Health System and Mt. Sinai hospitals.

42. HCA and Hill-Rom have had ongoing discussions regarding expansion of usage of Hill-Rom's RTLS-based hand hygiene system within HCA.

43. Hill-Rom believes that expanded sales of its RTLS-based hand hygiene system could increase substantially its annual sales to HCA.

44. The upgraded RTLS systems installed in conjunction with the RTLS-based hand hygiene system will track equipment, patients and hospital personnel through Hill-Rom's RTLS system.

45. Hill-Rom expects each installation of its RTLS-based hand hygiene system to generate substantial consulting revenue associated with installation and long-term maintenance revenue.

46. Hill-Rom also expects each installation of its RTLS-based hand hygiene system to lead to indirect sales, including products such as NurseCall, WatchChild, and hospital beds, which tie into Hill-Rom's RTLS system.

47. Hill-Rom does not intend to license its technology to competitors.

48. Hill-Rom believes that no reasonable royalty payment would be sufficient to compensate it for the profits it expects to achieve through sales of its RTLS-based hand hygiene system in the absence of infringement by competitors.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 6, 2014.

  
Adam McMullin

Dated: May 8, 2014

Respectfully submitted,

/s/ Stephen E. Noona

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2014, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, and will forward copies of the foregoing pleading by private process server to the following:

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